No. 92-1812

In the Supreme Court of the United States

OCTOBER TERM, 1993

UNITED STATES OF AMERICA, PETITIONER

v.

PEDRO ALVAREZ-SANCHEZ

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a confession given to federal authorities while a suspect is in state custody awaiting arraignment on state charges must be suppressed as a result of delay between the suspect's original arrest by state authorities and his eventual presentment on the federal crime to which he confessed.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-40a) is reported at 975 F.2d 1396. The order of the district court (Pet. App. 41a-50a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 15, 1992. A petition for rehearing was denied on January 22, 1993. Pet. App. 60a. On April 13, 1993, Justice O'Connor extended the time for filing a petition for a writ of certiorari to and including May 22, 1993. The petition was filed on May 12, 1993, and was granted on October 12, 1993. J.A. 55. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTE AND RULE INVOLVED

18 U.S.C. 3501 provides:

> (a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession * * * shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.
>
> (b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.
>
> The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

> (c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: *Provided*, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate or other officer.
>
> (d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.
>
> (e) As used in this section, the term "confession" means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

In pertinent part, Rule 5(a), Fed. R. Crim. P., provides:

> An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available federal magistrate or, in the event that a federal magistrate is not reasonably available, before a state or local judicial officer authorized by 18 U.S.C. § 3041. If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause.

STATEMENT

1. On Friday, August 5, 1988, officers of the Los Angeles Sheriff's Department obtained a warrant to search respondent's residence for heroin, heroin paraphernalia, and other evidence of narcotics distribution constituting a felony under California law. The warrant was executed later that afternoon and resulted in the discovery and seizure of narcotics, as well as rent receipts in respondent's name. The state authorities also recovered a total of $2,260 in counterfeit United States currency. Respondent was arrested based on his possession of the narcotics, and he was "booked" on that charge at approximately 5:40 p.m. He spent the weekend in the custody of state authorities. Pet. App. 54a, 57a.

Because of the counterfeit currency found during the search, the Los Angeles Sheriff's Department contacted the United States Secret Service on Monday morning, August 8, 1988. At approximately 11:30

a.m., Secret Service Special Agents Paul Lipscomb and John Bozzuto arrived at the Sheriff's Department and took possession of the counterfeit currency from the state authorities. The federal agents were then taken to an interview room, where they were introduced to respondent. At the request of the agents, a Spanish-speaking deputy sheriff advised respondent of his rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), and served as an interpreter. Pet. App. 51a-52a, 54a-55a, 58a. Respondent stated that he understood his rights, that he knew "what this was all about" because he had been a police officer in Mexico, and that he was willing to talk to the agents and to sign a waiver of his rights. After respondent signed the waiver form, he admitted that he had known the currency was counterfeit, but he claimed that a friend had found it abandoned in a motel room. The agents terminated the interview shortly thereafter when respondent invoked his right to remain silent, explaining that he had no desire to implicate others. *Id.* at 51a-52a.

The Secret Service agents then arrested respondent. They took him from the Sheriff's Department to the Secret Service field office for booking, a drive that took approximately 55 minutes. Once at the field office, the agents took respondent's fingerprints and photographs, and obtained a brief personal history.[1] The agents also prepared a criminal complaint. At approximately 2:30 p.m., Agent Lipscomb telephoned the court to advise that respondent was in federal

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[1] The booking process took somewhat longer than usual in respondent's case, because the Secret Service agents had to obtain the services of a Spanish interpreter in order to elicit his personal history and other booking information. See J.A. 27-28.

custody and that he would be brought for an initial appearance before the magistrate that afternoon. The court clerk told Agent Lipscomb that the magistrate's calendar was full for the day and directed the Secret Service to take respondent to the magistrate the following morning. Respondent was lodged for the evening in the federal detention center and was presented on the federal complaint on Tuesday, August 9, 1988. Pet. App. 52a-53a; J.A. 25-29.

2. Respondent was indicted for unlawful possession of counterfeit currency, in violation of 18 U.S.C. 472. Prior to trial, he moved to suppress the statement he made while in the custody of the Los Angeles Sheriff's Department on the ground, *inter alia*, that the delay between his state arrest and his federal presentment rendered the confession inadmissible under 18 U.S.C. 3501(c). The district court denied respondent's suppression motion. Pet. App. 41a-50a. The court first rejected respondent's claim that he did not voluntarily waive his rights under *Miranda*, and concluded that his confession was voluntary. *Id.* at 43a-45a. Turning to respondent's Section 3501(c) claim based on the delay in presenting him to a federal magistrate, the court concluded that suppression was not warranted in this case. The court explained:

> [T]here is no evidence in the instant case that the delay in arraignment was for the sole purpose of obtaining a confession or was the result of oppressive police practices prior to obtaining the confession, or that the delay otherwise caused the confession.
>
> Evidence * * * establishes that the defendant was taken into federal custody, transported, processed, fingerprinted and photographed immediately upon interrogation, and that arraignment was delayed until the next morning only because, due to the lateness of the day, the magistrate's calendar was full once booking was completed.

Pet. App. 49a. The court also noted that respondent "offered no evidence [of] a collusive arrangement between state and federal agents for purposes of obtaining the confession," and that "[t]he delay *after* the confession and before [respondent's] federal arraignment obviously ha[d] no effect on the prior confession and would not render it inadmissible." *Id.* at 50a. Respondent was subsequently convicted after a jury trial at which the confession was admitted.

3. A divided panel of the court of appeals reversed. Pet. App. 1a-40a. The majority concluded that respondent's confession was obtained more than six hours after his arrest, and that the government therefore could not invoke the six-hour "safe harbor" period provided by Section 3501(c), during which voluntary confessions "shall not be inadmissible solely because of delay in bringing [the arrestee] before a magistrate." The court rejected the government's contention that time spent by a defendant in state custody should be charged to the federal government only when "the defendant can show evidence of collusion between local and federal authorities." Pet. App. 20a n.8. Instead, the court concluded that periods of state and federal custody "should always be aggregated" in calculating the period of pre-presentment delay. That conclusion rendered the six-hour "safe harbor" period unavailable in this case, the court held, because respondent's confession to the Secret Service agents was not made within six hours of his arrest by state officers. *Ibid.*

Although the court noted that 18 U.S.C. 3501(a) provides that confessions "shall be admissible" if they are voluntary, it refused to apply that provision in this case, explaining that "[c]ourts must not make a fetish of construing statutes in a literal fashion," Pet. App. 9a, and that a literal interpretation of Section 3501(a) would nullify what the court believed was the negative implication of Section 3501(c) —*i.e.*, that some confessions may be inadmissible "solely" because of pre-arraignment delay irrespective of voluntariness. Pet. App. 9a-10a. The court concluded that suppression was justified in this case because, in its view, the delay that occurred "from Monday afternoon to Tuesday morning" was designed "specifically to provide federal officers with time to interrogate" respondent. *Id.* at 21a. That "avoidable and deliberate delay * * *, after a long period of custody," required suppression, the court concluded, lest the court "permit the prosecution to profit by its wilful violations." *Id.* at 22a.

The dissenting judge would have affirmed respondent's conviction. He found "no evidence that any delay in bringing [respondent] before the magistrate was used to lengthen the interrogation." Pet. App. 40a. Because respondent clearly knew the nature of the charges under investigation and readily admitted his involvement at the beginning of the interrogation, the dissenting judge would have held the confession admissible. *Ibid.*

SUMMARY OF ARGUMENT

I. The court of appeals concluded that a suspect's arrest by state authorities on state-law charges qualifies as the "arrest or other detention" contemplated by 18 U.S.C. 3501(c). That conclusion cannot be reconciled with the text of Section 3501(c), which makes clear that the relevant arrests are those that trigger a duty to bring the arrestee before a magistrate authorized to commit persons for "offenses against the laws of the United States"—*i.e.*, arrests for federal crimes.

Nor can the court of appeals' conclusion be reconciled with the legislative history of Section 3501, which shows that the statute was intended to override a line of cases in which this Court invoked its supervisory authority to suppress confessions produced by delays in presentment. Yet under those cases, prepresentment delay caused by state officers enforcing state law could not be attributed to federal authorities unless the defendant demonstrated that federal law enforcement officers induced their state counterparts to hold him illegally in order to secure a confession. The court of appeals anomalously interpreted Section 3501(c) as embodying a rule that is more favorable to criminal defendants than the supervisory rule that Section 3501 was intended to override.

II. Correction of the court of appeals' conclusion that the relevant arrest was effected by California authorities will preclude suppression of respondent's confession under Section 3501. See 18 U.S.C. 3501(d). But even if the arrest effected by California authorities is an "arrest" within the meaning of Section 3501, the court of appeals erred in ordering suppression in this case. The court of appeals relied on Sec-

tion 3501(c), which provides a "safe harbor" for confessions obtained after arrest and before presentment, if the confession occurs within six hours of the arrest. The court reasoned that the "safe harbor" provision must necessarily mean that pre-presentment confessions obtained more than six hours after arrest may be inadmissible solely because of the delay, even if the confessions are voluntary. The court also stated that suppression was warranted solely by the Monday-to-Tuesday delay that *followed* the confession in this case. Those conclusions are wrong for two reasons.

First, the negative implication drawn by the court from Section 3501(c) does not justify overriding the affirmative command of Section 3501(a) that a voluntary confession "shall be admitted in evidence." The court of appeals therefore erred in concluding that what Congress said in Section 3501(a) must give way to what Congress did *not* say in Section 3501(c). The district court in this case correctly found that respondent's confession was voluntary, and that is all that Congress required for its admissibility.

Second, even if a confession may be suppressed solely because of a delay in presentment, the delay between Monday afternoon and Tuesday morning was caused, as the district court found, by the need to complete respondent's booking and by the unavailability of the magistrate. That delay was therefore not "unnecessary," and it would not require suppression even if the confession had been obtained after the period of delay. In fact, however, the confession was obtained *before* the period of delay on which the court of appeals relied. In *United States* v. *Mitchell*, 322 U.S. 65 (1944), this Court held that any period

of pre-presentment delay that occurs *after* a confession cannot have had any role in producing the confession and therefore may not be used to justify its suppression. The rationale of that decision requires reversal of the judgment of the court of appeals.

ARGUMENT

I. RESPONDENT WAS NOT UNDER "ARREST OR OTHER DETENTION" WITHIN THE MEANING OF 18 U.S.C. 3501 WHEN HE CONFESSED, BECAUSE HE WAS IN THE CUSTODY OF STATE OFFICERS WHO ARRESTED HIM SOLELY FOR VIOLATIONS OF CALIFORNIA LAW

Rule 402 of the Federal Rules of Evidence provides:

> All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

The confession respondent gave to the Secret Service agents while he was in state custody was indisputably relevant to the crime for which he stood trial. Moreover, the court of appeals did not rule that the Constitution, any other rule of evidence, or any rule prescribed by this Court pursuant to statutory authority required the exclusion of that evidence. The court of appeals relied instead on an Act of Congress, 18 U.S.C. 3501, and on the "concerns expressed in * * * Fed. R. Crim. P. 5." Pet. App. 21a-23a & n.9. Because nothing in Section 3501 or Rule 5 requires suppression of a voluntary confession made by a suspect while he is in custody in connection with state law charges, the court of appeals erred in holding respondent's confession inadmissible at trial.

A. The Language Of Section 3501 And Rule 5 Does Not Support The Court Of Appeals' Conclusion That State Arrests Trigger Federal Presentment Obligations

Section 3501 of Title 18, entitled "Admissibility of confessions," provides in subsection (a) that in any federal prosecution, "a confession * * * shall be admissible in evidence if it is voluntarily given." 18 U.S.C. 3501(a). Subsection (b) provides that in determining the issue of voluntariness, the trial judge must take into consideration all the circumstances surrounding the giving of the confession, including the time between arrest and arraignment, if the confession occurred after arrest and before arraignment; whether the defendant knew the nature of the offense of which he was suspected when he made his confession; whether the defendant knew he was not required to make a statement and that any statement could be used against him; whether the defendant had been advised prior to questioning of his right to the assistance of counsel; and whether the defendant was without counsel when he was questioned. See 18 U.S.C. 3501(b).

Subsection (c) of Section 3501, the statute on which the Ninth Circuit relied, in effect creates a "safe harbor" period of six hours after arrest for law enforcement officers to present the arrestee to a magistrate. The statute provides that a voluntary confession given by a suspect within six hours of his "arrest or other detention * * * shall not be inadmissible solely because of delay in bringing such person before a magistrate or other officer empowered to commit persons charged with offenses against the laws

of the United States or of the District of Columbia." 18 U.S.C. 3501(c). The "safe harbor" period may be longer than six hours if the additional delay results from difficulties in transporting the arrestee to the magistrate or other officer. *Ibid.* Section 3501(d) further provides that nothing in Section 3501 "shall bar the admission in evidence of any confession made or given voluntarily by any person * * * at any time at which the person who made or gave such confession was not under arrest or other detention." 18 U.S.C. 3501(d).

In finding suppression to be required by Section 3501(c), the court of appeals reasoned as follows: (1) it held that the term "arrest" in Section 3501(c) refers not only to an arrest on a federal charge, but to any arrest on state or federal charges; (2) it noted that the period between respondent's arrest by state officers and his confession (three days) exceeded the six-hour "safe harbor" period in Section 3501(c); (3) it concluded that the negative implication of the "safe harbor" provision is that delays of more than six hours in presenting the arrestee to a magistrate may justify suppression of any confession obtained during that interim period; and (4) because it found that the pre-presentment delay in this case was both lengthy and unjustified, it held that respondent's confession had to be suppressed.

The court's analysis is flawed in a number of respects. First, and most importantly, the court was wrong in construing the term "arrest" in Section 3501 to include not only arrests for federal crimes, but also arrests for state law offenses. Section 3501 does not define the phrase "arrest or other detention," and we readily concede that, read in isolation,

it could encompass any incarceration, irrespective of the authority that justifies it. That reading, however, would conflict with the "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Deal* v. *United States*, 113 S. Ct. 1993, 1996 (1993). The context in which the phrase is used clearly indicates that the "arrest or other detention" must be of the kind that triggers an appearance before a judicial officer "empowered to commit persons charged with" federal or District of Columbia offenses—*i.e.*, before a judge authorized to grant or deny bail to those charged with crimes under federal authority. An arrest and ensuing custody by state officers enforcing their own laws—such as respondent suffered from Friday afternoon until Monday morning—does not trigger federal presentment obligations. It is therefore not the "arrest or other detention" of which Section 3501 speaks. Because respondent was not under "arrest or other detention" when he confessed, nothing in Section 3501 authorized suppression of his statements. See 18 U.S.C. 3501(d).

Rule 5(a), Fed. R. Crim. P., does not support the court of appeals' suggestion (Pet. App. 22a n.9) that an arrest on state charges triggers a duty to take the suspect to a federal magistrate for a speedy presentment[2] on any federal charges that might be war-

[2] The court of appeals' opinion, and some opinions of this Court, *e.g.*, *Mallory* v. *United States*, 354 U.S. 449, 454 (1957), refer to a defendant's first appearance before a magistrate generically as an "arraignment." A first appearance or "presentment" under Rule 5(a) differs from an "arraignment" under the federal rules. An "arraignment," which is the subject of Fed. R. Crim. P. 10, refers to the defendant's subsequent appearance before the court to enter a plea to charges set forth in an indictment or information. See 1 Charles Alan Wright, *Federal Practice and Procedure* § 71, at 76-77 (2d ed. 1982). When a defendant is presented before a magistrate pursuant to Rule 5(a), he has been arrested but usually has not been indicted. The defendant is therefore not called upon to plead to charges at that time. See Fed. R. Crim. P. 5(c). Instead, the magistrate conducting the presentment advises the arrestee of the complaint against him, advises him of his right to counsel, and advises him that he is not required to make any statement and that any statement he does make may be used against him. The magistrate also addresses the issue of bail and makes arrangements for a "preliminary examination," which is an adversary hearing to determine whether there is probable cause to hold the defendant to answer in the district court. See Fed. R. Crim. P. 5(c), 5.1.

ranted by the facts, much less the creation of an exclusionary rule to enforce that duty. Rule 5(a) requires that an arrestee be taken "without unnecessary delay before the nearest available federal magistrate," or before a state judge authorized to set bail for federal offenses under 18 U.S.C. 3041. If the arrest is effected without a warrant (as in the case of respondent's arrest by the Secret Service on Monday morning), Rule 5(a) also requires that a complaint showing probable cause be filed when the arrestee is brought before the magistrate.

As is clear from the actions it contemplates—the filing of a complaint under the federal rules and the setting of bail conditions under federal law—Rule 5(a) is part of "[t]he scheme for initiating a *federal* prosecution." *Mallory* v. *United States*, 354 U.S. 449, 454 (1957) (emphasis supplied). Thus, like Section 3501, the Rule is addressed only to arrests for viola-

tions of federal law; it does not control the actions of state officers enforcing their own laws. Cf. *Gallegos* v. *Nebraska*, 342 U.S. 55, 63-65 (1951) (plurality opinion). See also *United States* v. *Davis*, 437 F.2d 928, 931 (7th Cir. 1971) (Stevens, J.). Indeed, as this Court has recognized, the Rule is not violated by the failure to present a suspect who is questioned about a new federal crime while he is already in lawful custody for other charges under *federal* authority. See *United States* v. *Carignan*, 342 U.S. 36, 43-45 (1951). See also *Abel* v. *United States*, 362 U.S. 217, 225-230 (1960). The court of appeals therefore erred in concluding that a person who is in custody in connection with state charges is entitled under Rule 5(a) to a prompt presentment on any federal charges that might be brought against him, but for which he has not yet been arrested.

To construe the word "arrest" in Section 3501 and Rule 5(a) to include arrests by state officers for violations of state law would result in state arrests triggering federal presentment obligations in a broad range of cases. Especially when coupled with an exclusionary rule for confessions obtained in the interim (such as the court of appeals fashioned in this case), that result would introduce several anomalies into federal law.

First, excluding statements obtained while a suspect is in custody on state charges would not advance the goals of Section 3501. Federal officers may not learn of a suspect's existence, much less of the possibility that he committed a federal crime, until the suspect has been detained for some time on state charges. This case illustrates that problem, because it is undisputed that respondent was arrested on Friday by California authorities who were acting to enforce California narcotics laws, and that federal

authorities did not learn of his arrest or that counterfeit money had been seized until Monday morning. A rule that purports to "deter" federal officers from failing to present a suspect before a federal magistrate within six hours of the suspect's arrest on state charges penalizes federal officers for "violating" obligations of which they could not possibly have been aware. Such a rule would not rationally serve any purpose traditionally associated with exclusionary rules. See, *e.g.*, *United States* v. *Carignan*, 342 U.S. at 41-45; *Illinois* v. *Krull*, 480 U.S. 340, 347-355 (1987). See also *Abel* v. *United States*, 362 U.S. at 240.

Second, the rule adopted by the court of appeals effectively requires federal authorities to make an arrest and to file federal charges before they can interview a suspect as part of a routine investigation of alleged violations of federal law. Under the court of appeals' analysis, federal officers encountering a suspect who has been held in state custody for more than six hours may not be able to use any statement he makes to them even before they arrest him, and even if they present him to a federal magistrate immediately after his federal arrest. A court following the Ninth Circuit's analysis could hold the confession inadmissible on the ground that the defendant's state arrest preceded by more than six hours his presentment to the federal magistrate, and that the delay between the state arrest and the federal presentment required suppression under 18 U.S.C. 3501(c).

That result would be contrary to this Court's recognition that there is "no constitutional right to be arrested" as soon as the government obtains probable cause to believe that a suspect has committed a

crime. *Hoffa* v. *United States*, 385 U.S. 293, 310 (1966). See also *United States* v. *Lovasco*, 431 U.S. 783, 790-796 (1977). To the contrary, "[g]ood police practice often requires postponing an arrest, even after probable cause has been established, in order to * * * develop further evidence necessary to prove guilt to a jury." *United States* v. *Watson*, 423 U.S. 411, 431 (1976) (Powell, J., concurring). In order to develop such evidence, law enforcement officers are generally free to approach a suspect, as they would any other member of the public, and to make inquiry of him about the circumstances of a crime under investigation. See, *e.g.*, *Florida* v. *Bostick*, 111 S. Ct. 2382, 2386-2387 (1991).

The court of appeals did not dispute those principles, but it appeared to believe that they do not apply when law enforcement officers seek to question a person who is already incarcerated in connection with a different crime. There is no legal basis for such a distinction. The fact of custody may affect whether *Miranda* warnings are required before a detainee may be interrogated. But if the detainee is willing to waive those rights and speak to law enforcement officers, no legal principle heretofore recognized by this Court provides that they may ask him questions only if they first arrest him for the new crime, take him to federal court, and file a complaint charging him with that crime—as the court of appeals concluded in this case. See Pet. App. 22a n.9. On the contrary, in *United States* v. *Carignan*, *supra*, this Court rejected the contention that Rule 5(a) bars authorities from questioning an incarcerated person about a new crime if he has not been taken before a committing magistrate in connection with that crime. 342 U.S. at 43-45. That holding

is sufficient to dispose of the court of appeals' contrary conclusion in this case.[3]

Finally, the time of a defendant's "arrest" controls not only the requirement of presentment under Rule 5(a), but also the deadline by which an indictment must be filed under the Speedy Trial Act of 1974. See 18 U.S.C. 3161(b). Because both Rule 5 and the Speedy Trial Act address the timing requirements for starting a federal criminal prosecution, those timing requirements should be construed *in pari materia*. Accordingly, arrests on state charges should be treated similarly under the Rule and the Act.

The lower courts' cases construing the Speedy Trial Act consistently hold that arrests by state or tribal officers enforcing their own laws do not trigger the provisions of the Act, even when based on the same underlying conduct that later forms the basis for a federal prosecution. See, *e.g.*, *United States* v. *Charles*, 883 F.2d 355, 356 (5th Cir. 1989), cert. denied, 493 U.S. 1033 (1990); *United States* v. *Janik*, 723 F.2d 537, 542 (7th Cir. 1983); *United States* v. *Manuel*, 706 F.2d 908, 914-915 (9th Cir. 1983); *United States* v. *Adams*, 694 F.2d 200, 202 (9th Cir. 1982), cert. denied, 462 U.S. 1118 (1983); *United States* v. *Iaquinta*, 674 F.2d 260, 264 (4th Cir. 1982); *United States* v. *Wilson*, 657 F.2d 755, 767 (5th Cir. 1981), cert. denied, 455 U.S. 951 (1982);

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[3] Respondent was arrested by state officers in connection with the narcotics found in the apartment (Pet. App. 54a, 57a), and it was the probable cause for that arrest that justified the custody in which respondent was being held when he was interviewed by Secret Service agents. Respondent's position is therefore identical to that of the defendant in *Carignan*.

United States v. *Mejias*, 552 F.2d 435, 441 (2d Cir.), cert. denied, 434 U.S. 847 (1977). See also *United States* v. *Mills*, 964 F.2d 1186 (D.C. Cir.) (en banc), cert. denied, 113 S. Ct. 471 (1992). There is no sound policy reason for construing the term "arrest" differently in the context of the Speedy Trial Act than in the context of Rule 5(a) and Section 3501. In both settings, it is important to have a clear rule defining the initiation of federal criminal proceedings. Congress made federal arrest the starting point for purposes of the Speedy Trial Act; it would be anomalous to conclude, without strong supporting evidence, that Congress chose a different starting point for purposes of the presentment obligation and the law of confessions.

B. The History Of Section 3501 Is Inconsistent With The Court Of Appeals' Conclusion That State And Federal Custody Should "Always" Be Aggregated

Because the language of Section 3501, read in context, demonstrates that respondent was not under "arrest or other detention" in the relevant sense, there is no need to consult the legislative history for further guidance as to the statute's meaning. In any event, however, the legislative history of Section 3501, viewed against the background of the judge-made rule it was intended to replace, is inconsistent with the interpretation of Section 3501 adopted by the court below.

1. In *McNabb* v. *United States*, 318 U.S. 332 (1943), this Court, "[i]n the exercise of its supervisory authority over the administration of criminal justice in the federal courts," *id.* at 341, held inadmissible confessions obtained as the direct result

of federal officers' failure to comply with statutes mandating that an arrested person be taken promptly before the nearest committing magistrate.[4] The Court explained that the purpose of those statutes, and of similar state provisions, was to "check[] resort to those reprehensible practices known as the 'third degree' which, though universally rejected as indefensible, still find their way into use." *Id.* at 344. In the Court's view, those practices had in fact been used in *McNabb* to obtain the confessions at issue, *id.* at 344-345, and therefore "to permit such evidence to be made the basis of a conviction in the federal courts would stultify the policy which Congress has enacted into law." *Id.* at 345.[5]

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[4] The Court suggested that the supervisory power it invoked in *McNabb* derived from its authority to formulate common law rules of evidence for use in federal criminal trials. *McNabb* v. *United States*, 318 U.S. at 341. See also *United States* v. *Mitchell*, 322 U.S. 65, 66 (1944) (noting that *McNabb* "was merely another expression" of the Court's practice of formulating common law rules of evidence). That authority was established in *Funk* v. *United States*, 290 U.S. 371 (1933), and was sanctioned by Congress in former Rule 26 of the Federal Rules of Criminal Procedure.

[5] The Court had granted certiorari in *McNabb* to review a claim that the confessions were involuntary under due process standards, but avoided that issue by raising the prompt presentment issue *sua sponte*. The proceedings on remand revealed that the Court had been mistaken in the factual premise of its analysis—that the defendants were not presented before a commissioner promptly after their arrest. *McNabb* v. *United States*, 142 F.2d 904, 905-907 (6th Cir.), cert. denied, 323 U.S. 771 (1944). Scholars later took issue with the legal premise of the Court's analysis—that the prompt presentment statutes were intended to prevent prolonged interrogation or other third-degree practices. The legislative history of the

The statutes on which the Court relied in *McNabb* were superseded by the adoption of Rule 5 in 1946. The preliminary draft of Rule 5 had included a provision codifying the holding of *McNabb*, but that provision caused such controversy that it was omitted from the final draft submitted by the advisory committee to this Court, and from the criminal rules as adopted. See 1 Charles Alan Wright, *Federal Practice and Procedure* § 72, at 80-84 (2d ed. 1982). The Court nonetheless adhered to *McNabb* in the first case that reached it after the adoption of the new rule, *Upshaw* v. *United States*, 335 U.S. 410 (1948), where the Court reaffirmed the nonconstitutional basis for the doctrine (*id.* at 414 & n.2) and rejected the contention that *McNabb* had done "no more than extend the meaning of 'involuntary' confessions to proscribe confessions induced by psychological coercion as well as those brought about by physical brutality." 335 U.S. at 412.

The Court invoked the *McNabb* rule again in *Mallory* v. *United States*, 354 U.S. 449, 453-456 (1957), where it further explained the rationale for the rule. The Court quoted the language of Rule 5(b) (now found in Rule 5(c)) to the effect that the judicial officer must inform the defendant of his rights to counsel and silence, and also must advise him that any statement he makes may be used against him. *Id.* at 453-454. As the Court made clear (*id.* at 455),

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federal statutes at issue in *McNabb* indicates that they were intended "to prevent federal marshals from increasing their fees for transporting prisoners farther than necessary." Sara Sun Beale, *Reconsidering Supervisory Power in Criminal Cases: Constitutional and Statutory Limits on the Authority of the Federal Courts*, 84 Colum. L. Rev. 1433, 1447-1448 (1984).

the defendant in *Mallory* had been denied those safeguards, which the prompt presentment requirement was designed to protect:

> [The defendant] was not told of his rights to counsel or to a preliminary examination before a magistrate, nor was he warned that he might keep silent and "that any statement made by him may be used against him." After four hours of further detention at headquarters, during which arraignment could easily have been made in the same building in which the police headquarters were housed, [the defendant] was examined by the lie-detector operator for another hour and a half before his story began to waver.

Not until the defendant confessed to the rape under investigation was he taken before a judicial officer—by which time, as the Court put it, the "caution" mandated by Rule 5(b) "had lost its purpose." *Id.* at 455. The Court therefore invoked *McNabb*'s exclusionary rule to reverse the conviction.

2. Consistent with its roots in this Court's supervisory power, the *McNabb-Mallory* rule focused on depriving federal officers of the fruits of their wrongdoing. The Court did not apply the doctrine to confessions obtained by state officers, see *Gallegos* v. *Nebraska*, 342 U.S. at 63-65 (plurality opinion); cf. *Crooker* v. *California*, 357 U.S. 433, 437 (1958), except when state officers illegally detained a suspect at the behest of federal agents. It was on that theory that in *Anderson* v. *United States*, 318 U.S. 350 (1943), decided the same day as *McNabb*, the Court required suppression of confessions made to federal agents while the suspects were in state custody.

In *Anderson*, federal power lines had been dynamited during a mining strike. Federal agents arrived

to investigate, and "[t]hereupon, on the same day," the local sheriff began to take strikers into custody, even though no state law permitted that action in the circumstances. 318 U.S. at 352 & n.2. The strikers were held for several days, during which they were repeatedly questioned by the federal agents; it does not appear from the Court's opinion that state officers participated in the interrogation, or indeed that they were endeavoring to solve any state crime. In those circumstances, the Court concluded that the record disclosed "a working arrangement" between federal and state officers that "made possible the abuses revealed by this record," and enabled the federal officers to secure the confession "improperly." *Id.* at 356.

The Court next considered the issue of confessions given by suspects in state custody in *Coppola* v. *United States*, 365 U.S. 762 (1961) (per curiam). In that case, the Second Circuit, sitting *en banc*, had upheld the admission of a confession made to a federal agent while the suspect was in the custody of the local police—custody that was itself illegal as a result of a failure of the local police to comply with a prompt arraignment requirement imposed by New York law. *United States* v. *Coppola*, 281 F.2d 340, 341 n.1, 344-345 (2d Cir. 1960). The suspect had been arrested by the local police on their own initiative, but on crimes both governments were investigating. In refusing to suppress the defendant's confession, the Second Circuit explained that the delay in presenting the defendant on state charges does not require suppression of a confession made to federal officers (*id.* at 344 (emphasis added)):

> That the Buffalo police notified the F.B.I. of the defendants' apprehension would be normal police procedure. Only by such an interchange of information can society be adequately protected against crime. * * * [And] [i]f this cooperation reached the point of arrest and detention by local police for the purpose of enabling federal officers to question the defendants * * * for a period of time forbidden to federal officers by Rule 5(a) * * *, admissions thus obtained would properly be excluded. * * * The rule excludes confessions when the "working arrangement" *includes the illegal detention*—in other words, when federal law enforcement officers *induce state officers to hold the defendant illegally* so that they may secure a confession. However, to bring a case within this rule there must be facts, as there were in Anderson, not mere suspicion or conjecture.

This Court granted certiorari, heard argument, and summarily affirmed. See *Coppola* v. *United States*, 365 U.S. at 762.[6]

3. That was the state of the law when Congress passed Section 3501 as part of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-

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[6] Significantly, the petitioner in *Coppola* had urged not only the existence of an improper "working arrangement" under *Anderson*, but also that the "working arrangement" requirement for inadmissibility should be overruled in light of this Court's decision in *Elkins* v. *United States*, 364 U.S. 206 (1960). See Brief for Petitioner at 26-33, *Coppola* v. *United States*, 365 U.S. 762 (1961) (No. 153 (O.T. 1960)). *Elkins* held that evidence seized by state officers in violation of the Fourth Amendment is not admissible in federal prosecutions, even if the federal government did not participate in the constitutional violation. This Court rejected that argument. See *Coppola* v. *United States*, 365 U.S. at 762 ("We find no merit in the other argument advanced by petitioner").

351, § 701, 82 Stat. 210. The House bill (H.R. 5037) and the Senate bill (S. 917) for what became that Act initially contained no provision relating to the admissibility of confessions. The House passed its bill without addressing that subject (113 Cong. Rec. 21,812-21,861 (1967)), but the Senate Judiciary Committee substantially revised the version passed by the House, adding provisions relating to the admissibility of eyewitness testimony (now 18 U.S.C. 3502) and Section 3501 relating to the admissibility of confessions.

The Senate Report that accompanied the legislation explained that Section 3501 was designed, *inter alia*, to counteract the effect on law enforcement of the decisions in *McNabb* and *Mallory*:[7]

> Voluntary confessions have been admissible in evidence since the early days of our Republic. These inculpatory statements have long been recognized as strong and convincing evidence—often called the best evidence of guilt. In *Mallory* v. *United States*, 354 U.S. 449 (1957), the U.S. Supreme Court declared inadmissible voluntary confessions made during a period of unnecessary delay between the time of arrest and the time the suspect is taken before a committing magistrate. * * *
>
> Enactment of subsection[] 3501 * * * is needed to offset the harmful effects of the *Mallory* case[.] * * *

[7] Because *McNabb* and *Mallory* were explicitly grounded on the Court's supervisory authority—a power that "exists only in the absence of a relevant Act of Congress," *Palermo* v. *United States*, 360 U.S. 343, 353 n.11 (1959); see also *Bank of Nova Scotia* v. *United States*, 487 U.S. 250, 254 (1988)—Congress was confident of its authority to override them. See S. Rep. No. 1097, 90th Cong., 2d Sess. 40 (1968).

> After considering the testimony of many witnesses, and statements and letters of many interested parties, the committee found that there is a need for legislation to offset the harmful effects of the Court decisions mentioned above. These decisions have resulted in the release of criminals whose guilt is virtually beyond question.

S. Rep. No. 1097, 90th Cong., 2d Sess. 38, 41 (1968). In order to override the *McNabb-Mallory* line of cases, Congress provided that a confession "shall not be inadmissible solely because of delay in bringing such person before a magistrate," 18 U.S.C. 3501(c), and it also enacted the traditional requirement of voluntariness as the sole test for the admissibility of confessions. In the words of the statute, Congress directed that "[i]f the trial judge determines that the confession was voluntarily made it *shall be admitted* in evidence." 18 U.S.C. 3501(a) (emphasis supplied).

The record of the Senate debate on Section 3501 confirms that supporters and opponents of Section 3501 understood that the statute would do away with the judge-made rule embodied in the *McNabb-Mallory* line of cases, and that it would make delay in presentment merely one of several factors to be considered in assessing the voluntariness of a confession.[8] The Senate passed the statute substantially as

[8] See, *e.g.*, 114 Cong. Rec. 11,612 (1968) (remarks of Sen. Thurmond) (Section 3501 "would restore the test for admissibility of confessions in criminal cases to that time-tested and well-founded standard of voluntariness. * * * This provision would set aside the inflexible and technical rules established in the *Mallory* * * * decision[]"); *id.* at 14,016 (remarks of Sen. Stennis) (Section 3501 "will counteract the so-called

it was reported by the Judiciary Committee, except that an amendment was proposed by Senator Scott to limit to six hours "the period during which confessions may be received or interrogations may continue." 114 Cong. Rec. 14,184 (1968). That amendment, which was adopted without significant debate (*id.* at 14,184-14,186), was not coupled with any provision for the suppression of voluntary confessions obtained more than six hours after arrest, and there is no indication that any Senator believed that it would affect the voluntariness test set forth in Section 3501(a).[9]

Mallory rule, and put an end to the practice of discarding voluntary confessions of guilt because the police officers were not hasty enough in getting the defendant before a committing magistrate. Delay in taking the defendant before a commissioner would continue to be a factor in determining whether his confession was voluntarily given but it would no longer be the overriding issue. Mere delay would cease to be an absolute and automatic cause for excluding valuable and often essential evidence"); *id.* at 11,594 (remarks of Sen. Morse) ("[t]his provision would overrule the Supreme Court's decision in *Mallory*"); *id.* at 14,167-14,168 (remarks of Sen. McIntyre) ("Section 3501(c) also provides that a confession shall not be inadmissible in a Federal court solely because of any delay between the arrest and arraignment of the defendant, thus overruling the Supreme Court's decision in *Mallory*"). See also *id.* at 11,201 (remarks of Sen. McClellan); *id.* at 11,891 (remarks of Sen. Tydings); *id.* at 14,136 (remarks of Sen. Fong).

[9] Senator Scott was a member of the Judiciary Committee, and he concurred in the Committee's recommendations concerning the admissibility of confessions. He also wrote separately to express his views on the bill, including his view that a voluntariness test for confessions "keeps the balance true * * * [and] will enable the judge and the jury to search for the truth within the bounds of constitutional guarantees." S. Rep. No. 1097, *supra*, at 213.

The Senate then returned its version of the bill to the House, where the ensuing debate makes clear that the overruling of *McNabb* and *Mallory* was understood by all to survive Senator Scott's amendment. The sponsor of the earlier House version of the bill began the debate by stating that Section 3501 "turn[ed] the clock backward to the day before Mallory * * * and ma[de] 'voluntariness' the sole test as to the validity of a confession." 114 Cong. Rec. 16,066 (1968) (remarks of Rep. Celler). Other representatives agreed with that description of the effect of Section 3501, and they specifically adverted to the demise of the *Mallory* rule.[10] The House then agreed to the Senate version of the bill, 114 Cong. Rec. 16,271-16,300 (1968), and that version, which included Section 3501, became law.

4. The foregoing discussion demonstrates two propositions that together are fatal to respondent's case. The first is that even *before* Congress enacted Section 3501, the *McNabb-Mallory* doctrine did not

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[10] See, *e.g.*, 114 Cong. Rec. 16,273 (1968) (remarks of Rep. Rogers) ("Adoption of this change * * * would assign proper weight to the [*Mallory*] rule. Delay in bringing a suspect before a committing magistrate would be a factor to consider in determining the issue of voluntariness, but it would not be the sole criterion to be considered"); *id.* at 16,276 (remarks of Rep. Anderson) ("Section 3501 makes voluntary confessions admissible in Federal courts. This merely returns the law in these cases to what it was for more than 175 years * * *. Section 3501(c) does overrule the Mallory decision. * * * [I]t should be emphasized that the effect of this section, 3501(c) is merely to affirm the proposition that a confession cannot be ruled out solely because of a delay in presentment"); *id.* at 16,274-16,275 (remarks of Rep. MacGregor); *id.* at 16,285 (remarks of Rep. Machen); *id.* at 16,295 (remarks of Rep. Reid).

permit suppression of a confession given by a suspect in state custody unless he demonstrated that federal and state authorities had a "working arrangement" for the purpose of depriving him of his right to a prompt presentment under Rule 5(a). And that burden had to be met with "facts, * * * not mere suspicion or conjecture," showing that "federal law enforcement officers induce[d] state officers to hold the defendant illegally so that they [could] secure a confession." *United States* v. *Coppola*, 281 F.2d at 344. Respondent has not met and cannot meet that test, and his suppression motion could not have succeeded even if Congress had never enacted Section 3501.

The second proposition is that Congress enacted Section 3501 in order to make voluntariness the sole test for the admissibility of confessions, and that Congress did so because it believed that the *McNabb-Mallory* doctrine was unduly favorable to criminal defendants. Yet the interpretation of Section 3501 adopted by the court of appeals—that state and federal custody must always be aggregated for purposes of pre-presentment delay, Pet. App. 20a n.8—is far more generous to criminal defendants than the *McNabb-Mallory* doctrine ever was, and can scarcely be thought more limited than the rule followed by this Court in *Anderson* and *Coppola*.

Not surprisingly, the five courts of appeals that have considered this issue since Section 3501 was enacted have disagreed with the Ninth Circuit's view that state and federal custody must always be aggregated in calculating pre-presentment delay. Those courts have concluded that Section 3501(c) either is not triggered at all by a state arrest, or is triggered by such an arrest only when the defendant demonstrates that federal and state authorities colluded with the specific purpose of depriving him of a speedy federal presentment. See *United States* v. *Carter*, 910 F.2d 1524, 1528 (7th Cir. 1990), cert. denied, 111 S. Ct. 1628 (1991); *United States* v. *Barlow*, 693 F.2d 954, 957-959 (6th Cir. 1982), cert. denied, 461 U.S. 945 (1983); *United States* v. *Van Lufkins*, 676 F.2d 1189, 1192-1193 (8th Cir. 1982); *United States* v. *Torres*, 663 F.2d 1019, 1023-1024 (10th Cir. 1981), cert. denied, 456 U.S. 973 (1982); *United States* v. *Rollerson*, 491 F.2d 1209, 1212 (5th Cir. 1974).[11]

The Ninth Circuit's ruling that a state arrest constitutes an "arrest" for purposes of Section 3501 is thus contrary to the language and context of the statute, its background and legislative history, and the uniform line of decisions from other courts of appeals. The court of appeals was therefore wrong to conclude that the period of pre-presentment delay while respondent was in state custody could be used to justify suppression of his confession.

II. EVEN IF THE RELEVANT ARREST WAS EFFECTED BY CALIFORNIA AUTHORITIES, ADMISSION OF RESPONDENT'S VOLUNTARY CONFESSION WAS PROPER

Rejection of the court of appeals' conclusion that the arrest by California authorities was the relevant

[11] See also *United States* v. *White*, 979 F.2d 539, 543 (7th Cir. 1992); *United States* v. *Watson*, 591 F.2d 1058, 1061-1062 (5th Cir.) (per curiam), cert. denied, 441 U.S. 965 (1979); *United States* v. *Jensen*, 561 F.2d 1297, 1299 (8th Cir. 1977); *United States* v. *Gaines*, 555 F.2d 618, 622 (7th Cir. 1977); *United States* v. *Elliott*, 435 F.2d 1013, 1015 (8th Cir. 1970).

"arrest" for purposes of Section 3501 and Rule 5 is sufficient to overturn its judgment. But even if this Court concludes that the court of appeals correctly decided that issue, reversal is nonetheless required for two independent reasons.

A. First, the court of appeals erroneously concluded that Section 3501(c) authorizes the suppression of voluntary confessions in order to penalize the government for a pre-presentment delay that exceeds six hours. Section 3501(c) does not prescribe what consequences must follow when a confession is made outside the six-hour "safe harbor" period. It provides only that certain confessions shall be admitted notwithstanding delay; it does not state that all other confessions must be suppressed. See *United States* v. *Halbert*, 436 F.2d 1226, 1232 (9th Cir. 1970); see also *United States* v. *Marrero*, 450 F.2d 373, 378 (2d Cir. 1971), cert. denied, 405 U.S. 933 (1972). Any implication to the contrary is refuted by Section 3501(a), which requires the admission in evidence of any confession found by the trial judge to be voluntary.

The court of appeals, however, was of the view that to construe "§ 3501(a) literally * * * would create a clear conflict with § 3501(c) and would render the latter section meaningless." Pet. App. 9a. The court did not believe that giving effect to Section 3501(a) would render Section 3501(c) "meaningless" in the sense that Section 3501(c) would have no effect in any case; in cases in which a confession is made within six hours of arrest, Section 3501(c) plainly precludes a district judge from declaring the confession inadmissible solely because of delay. Rather, the court believed that giving full effect to

Section 3501(a) would override what the court understood to be the negative pregnant of Section 3501(c)—that "there must be circumstances in which delay in arraignment will require suppression of a confession regardless of [its] voluntariness." Pet. App. 10a.

The court of appeals erred in concluding that what Congress did not say in Section 3501(c) was more important than what it did say in Section 3501(a). Congress made clear in Section 3501(a) that a voluntary confession "shall be admitted." Whatever negative implication might be drawn from Section 3501(c) standing alone, that implication cannot overcome what Congress expressly said in Section 3501(a). See *Springer* v. *Government of Philippine Islands*, 277 U.S. 189, 206 (1928) (negative implications drawn from statutory language and canons of construction must yield when "a contrary intention on the part of the law-maker is apparent"); see also *Pauley* v. *BethEnergy Mines, Inc.*, 111 S. Ct. 2524, 2537-2538 (1991); *Burns* v. *United States*, 111 S. Ct. 2182, 2186 (1991).

In any event, there is no conflict between the negative implication of Section 3501(c)—*i.e.*, that delay in presenting the defendant can sometimes affect the admissibility of his confession—and the language of Section 3501(a). The two subsections can be read consistently, together with Section 3501(b), to produce the following regime: confessions are to be admitted if they are voluntary (Section 3501(a)); voluntariness turns on a consideration of a variety of factors, including any period of delay after arrest and before presentment (Section 3501(b)); if the confession is given before present-

ment but within six hours of the arrest, the delay in presentment shall not be a basis for holding the confession inadmissible (Section 3501(c)); but if the confession occurs outside that six-hour period, the "safe harbor" of Section 3501(c) is unavailable, and the period of delay in presenting the arrestee may in some circumstances justify a finding of involuntariness, either alone (in cases where the delay is extraordinarily long and oppressive) or in conjunction with other factors set forth in Section 3501(b).

Assuming that respondent was "arrested" for purposes of Section 3501(c) on Friday afternoon, and that the "safe harbor" provision of Section 3501(c) was therefore unavailable to the government (because he confessed on Monday, more than six hours after the Friday "arrest"), the district court nonetheless correctly refused to suppress his confession. The unavailability of the "safe harbor" means that the delay in presentment could be considered in determining the voluntariness of respondent's confession, and that it could potentially be the principal basis for a finding of involuntariness. In this case, however, there is no basis for concluding that the delay between respondent's state arrest and his interrogation by federal officers rendered his confession involuntary.

As the district court noted (Pet. App. 44a-45a), respondent was advised in his native language of his rights to terminate the interview at any time or to have the assistance of counsel during the interrogation, and he readily agreed to waive those rights both orally and in writing. Respondent had experience with law enforcement, since he had been a police officer in Mexico. His conversation with the agents

appeared relaxed, he was fully aware that the agents were interested in investigating the allegations regarding respondent's possession of counterfeit currency, and he felt free to terminate the interview when it took a turn he did not like. Accordingly, the factors set forth in Section 3501(b) were entirely consistent with the district court's conclusion that respondent's "statements during interrogation were, in fact, voluntarily, intelligently and knowingly made." *Id.* at 45.

B. Even if Section 3501 retained the broadest possible version of the *McNabb-Mallory* doctrine for confessions falling outside the six-hour "safe harbor" period of Section 3501(c),[12] the decision of the court of appeals would still be unsupportable.

1. As we have noted, the Ninth Circuit expressly rested its decision to suppress on the purported misconduct of federal agents in delaying respondent's presentment from Monday afternoon to Tuesday morning. Nothing in the record supports the court of appeals' conclusion that the delay in presenting respondent to the magistrate was the result of mis-

[12] In fact, because respondent was advised of his rights as required by *Miranda* v. *Arizona*, 384 U.S. 436 (1966), and voluntarily waived those rights, he should be barred from any claim under *McNabb-Mallory*. As several circuits have concluded, see, *e.g.*, *United States* v. *Salamanca*, 990 F.2d 629, 633-634 (D.C. Cir. 1993); *United States* v. *Barlow*, 693 F.2d at 959; *United States* v. *Indian Boy X*, 565 F.2d 585, 591 (9th Cir. 1977), cert. denied, 439 U.S. 841 (1978); *Pettyjohn* v. *United States*, 419 F.2d 651, 655-656 (D.C. Cir. 1969), cert. denied, 397 U.S. 1058 (1970); *O'Neal* v. *United States*, 411 F.2d 131, 136-137 (5th Cir.), cert. denied, 396 U.S. 827 (1969), *Miranda* warnings supply the words of "caution" that the Court found lacking in *Mallory*. See *Mallory* v. *United States*, 354 U.S. at 455.

conduct. On the contrary, the record is clear that the delay was caused by the booking process and the congestion in the magistrate's docket. Pet. App. 49a. *Mallory* itself recognized that the time necessary to complete the administrative steps incident to arrest, including booking, is not "unnecessary delay," and it emphasized that the government had failed to present the defendant before one of the "numerous committing magistrates" who were available. 354 U.S. at 454-455. Even under *Mallory*, therefore, the delay on which the court of appeals relied was not "unnecessary," and it would not furnish a basis for suppressing a confession that followed that delay.

2. More importantly, respondent confessed on Monday morning, and he was not interrogated and made no statement of any kind from Monday afternoon to Tuesday morning. The delay in presenting him following his federal arrest therefore could not possibly have had any role in inducing his confession.

In *United States* v. *Mitchell*, *supra*, this Court held that post-confession delay, even if improper, does not affect the admissibility of a confession under the *McNabb* rule. In *Mitchell*, the defendant confessed shortly after his arrest, but his arraignment was then illegally delayed for eight days. This Court reversed an order suppressing the confession, explaining:

> [T]he illegality of Mitchell's detention does not retroactively change the circumstances under which he made the disclosures. These, as we have seen, were not elicited through illegality. Their admission, therefore, would not be use by the Government of the fruits of wrongdoing by its officers. Being relevant, they could be excluded only as a punitive measure against unrelated wrongdoing by the police. Our duty in shaping rules of evidence relates to the propriety of admitting evidence. This power is not to be used as an indirect mode of disciplining misconduct.

322 U.S. at 70-71.

That principle reflects a recognition that post-confession delay has no logical relevance to the voluntariness of a defendant's confession, and that even *McNabb*'s prophylactic rule should not be invoked to deprive the prosecution of a confession whose voluntariness is not even theoretically affected by delay. That understanding has appropriately informed the construction given by other circuits (and by the Ninth Circuit in earlier cases) to the term "delay" in Section 3501.[13] Accordingly, even if the delay between Monday afternoon and Tuesday morning in presenting respondent to a magistrate could be deemed the product of unreasonable conduct by the arresting agents, that period of post-confession delay could not have played any role in producing respondent's confession. It therefore would not have been counted even under the *McNabb-Mallory* doctrine that predated the enactment of Section 3501.

Thus, even on the theory that some form of the *McNabb-Mallory* doctrine remains the law, the court

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[13] See, *e.g.*, *United States* v. *Rojas-Martinez*, 968 F.2d 415, 418 (5th Cir.), certs. denied, 113 S. Ct. 828 (1992), and 113 S. Ct. 995 (1993); *United States* v. *Cruz Jimenez*, 894 F.2d 1, 8 (1st Cir. 1990); *United States* v. *Montes-Zarate*, 552 F.2d 1330, 1331 (9th Cir. 1977) (per curiam), cert. denied, 435 U.S. 947 (1978); *United States* v. *McCormick*, 468 F.2d 68, 75 (10th Cir. 1972), cert. denied, 410 U.S. 927 (1973); *United States* v. *Keeble*, 459 F.2d 757, 761 (8th Cir. 1972), rev'd on other grounds, 412 U.S. 205 (1973).

of appeals' approach to the admissibility of respondent's confession was based on a seriously flawed interpretation of Section 3501 and the federal law of confessions. Because respondent's voluntary confession was not the product of misconduct by the arresting officers or an unreasonable delay in presenting him to a federal magistrate, the confession was properly admitted at trial, and respondent's conviction should have been upheld.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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NOVEMBER 1993

☆ U. S. GOVERNMENT PRINTING OFFICE: 1993 501157 80055